

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DENVER MCFADDEN,	:	
	:	
Plaintiff,	:	
	:	19-CV-5508 (VSB)
-against-	:	
	:	<u>ORDER</u>
CITY OF NEW YORK, et al.,	:	
	:	
Defendants.	:	
	:	
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VERNON S. BRODERICK, United States District Judge:

On January 26, 2021, I entered an order staying this action. (Doc. 55.) On October 18, 2021, I entered an order directing the parties to meet and confer and to inform me as to whether this action should remain stayed. (Doc. 59.) Due to a typographic error in how the Court had listed pro se Plaintiff's contact information, the parties were unable to get in touch with each other. (*See* Doc. 61.) It appears that error is now resolved, as on December 17, 2021, Plaintiff filed a letter confirming his address and providing a phone number at which he can be reached. (Doc. 62 (the "Letter").)

In the Letter, Plaintiff states that he wishes to keep the action stayed. The Letter also states that Plaintiff has yet to receive discovery from Defendants in response to earlier requests, and that Plaintiff seeks to have counsel appointed to represent him. But, until the stay is lifted and a case management plan is in place, no party will be under any obligation to produce materials in response to discovery requests.

With this in mind, it is hereby:

ORDERED that by January 21, 2022, the parties are to meet and confer regarding

whether this action should remain stayed and file a joint letter explaining whether the stay should continue. If the parties disagree about whether this action should remain stayed, their joint letter should explain their respective positions. If the parties agree the stay can be lifted, they should include in their joint letter the information requested by my August 24, 2020 order, and they should also file a proposed case management plan as requested in that order. (*See* Doc. 48.) Furthermore, it is

ORDERED that Plaintiff's request for the appointment of counsel is DENIED without prejudice to Plaintiff's moving to have counsel appointed once discovery is closed and once any motions for summary judgment are resolved. In determining whether to grant an application for counsel, the Court must consider "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, his efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." *Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 172 (2d Cir. 1989) (per curiam). As a threshold matter, in order to qualify for appointment of counsel, Plaintiff must demonstrate that his claim has substance or a likelihood of success. *See Hodge v. Police Officers*, 802 F.2d 58, 60-61 (2d Cir. 1986). In reviewing a request for appointment of counsel, the Court must be cognizant of the fact that volunteer attorney time is a precious commodity and, thus, should not grant appointment of counsel indiscriminately. *Cooper*, 877 F.2d at 172. A more fully developed record will be necessary before it can be determined whether Plaintiff's chances of success warrant the appointment of counsel.

The Clerk of Court is respectfully directed to mail a copy of this Order and a copy of my order at docket number 48 to the pro se Plaintiff.

SO ORDERED.

Dated: December 21, 2021
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive style with a large, stylized "V" and "B".

Vernon S. Broderick
United States District Judge